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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,788	11/14/2000	Michael C. Finley	19109.0020U2	8889
23859	7590	06/30/2005	EXAMINER	
NEEDLE & ROSENBERG, P.C. SUITE 1000 999 PEACHTREE STREET ATLANTA, GA 30309-3915			KNEPPER, DAVID D	
			ART UNIT	PAPER NUMBER
			2654	

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/712,788

Applicant(s)

FINLEY

Examiner

David D. Knepper

Art Unit

2654

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

1. Applicant's correspondence filed on 24 Jan 2005 (Amendment,& Arguments) has been received and considered. Claims 1-14 are pending.

### Claims

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1-14 are rejected under 35 U.S.C. § 103 as being unpatentable over Chen (5,991,737).

As per claim 1, Chen teaches or suggests “facilitating a transaction with a person listening to transmitted audible content” with his automated consumer response to publicly broadcast information:

“detecting an electronic request transmitted from said request device” (his consumer transmitter 18, col. 2, lines 55-56 which allows the user to send a request);

“matching said content to said deliverable” (suggested by his utilizing pattern recognition, [to] identify the songs, col. 4, lines 53-54);

“monitoring the transmission between the request device and the remote source to ensure complete transmission of the electronic request” (his order processor communicates with content identification processor 34 to obtain the contents of the broadcast information specified in the order, with the consumer transmitter to provide feedback or request additional information indicating that the transmission is indeed monitored and that feedback will be provided as necessary if the request information is not complete; and

“providing said deliverable” (his fulfillment of an end product or service to the consumer, col. 3, lines 45-46).

It is noted that Chen does not explicitly teach details for “matching said content”. However, he teaches that it is possible to store and recall data corresponding to broadcast information, col. 5, lines 50-51 and that broadcasts of songs may be matched utilizing pattern recognition, col. 4, lines 52-56. It would have been obvious for a person having ordinary skill in the pertinent art, at the time the invention was made, to combine the broadcast storage and pattern recognition taught by Chen because Chen teaches that the order processor may be automated or manual...utilizing either touch tones or voice recognition... or an interactive voice response system, col. 4, lines 61-67 which teaches that it is obvious to provide a wide variety of order mechanisms requiring certain data to be stored and recognized. Thus, the combination of storing and matching broadcasts of songs would have been obvious to facilitate ease of ordering as fairly suggested by Chen as noted above.

Claim 2: Receiving payment is inherent in the ordering process.

Claim 3: A remote location is obvious in view of his use of a cellular telephone, col. 2, lines 55-56.

Claim 4: "Obtaining profile information from a person...stored at a host site remote from said person" is taught by Chen in col. 4, lines 33-37 with his Fulfillment of an order can include a charge to a consumer account, which may be an account maintained by processing station 22 or an external account.

Claims 4-14 are rejected under similar arguments as applied to claims 1-3 above. It is clear that Chen teaches that a variety of transmitting and receiving mechanisms may be synchronized to allow manual or automatic transmission of necessary ordering information to include television, radio...tuning and current date and time, see col. 5, lines 23-55.

Claim 8: "...monitoring the transmission from the transmitter to ensure complete transmission of request from the request initiator to the remote service" (his order processor communicates with content identification processor 34 to obtain the contents of the broadcast information specified in the order, with the consumer transmitter to provide feedback or request additional information indicating that the transmission is indeed monitored and that feedback will be provided as necessary if the request information is not complete.

The argument (24 Jan 2005) on page 8 that the "monitoring..." step (claims 1) is not taught by Chen is clearly false as noted above.

The argument (24 Jan 2005) on page 8 that the "obtaining profile information...stored at a host site remote from said person" (claim 4) is also false as noted above regarding claim 4.

The argument (24 Jan 2005) on page 8 that "...monitoring the transmission from the transmitter to ensure complete transmission of request from the request initiator to the remote service" (claim 48) is not taught by Chen is also false as noted above.

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

5. Some correspondence may be submitted electronically. See the Office's Internet Web site <http://www.uspto.gov> for additional information.

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**The Central fax number is 571-273-8300.** Please label **INFORMAL** or **DRAFT** communications accordingly.

Mail Stop should be omitted if none is indicated.

Effective 14 January 2005, except correspondence for Maintenance Fees, Deposit Accounts (see 37 CFR 1.25(c)(4)), and Licensing and Review (see 37 CFR 5.1(c) and 5.2(c)), please address correspondence delivered by other delivery services (i.e. – Federal Express (Fed Ex), UPS, DHL, Laser, Action, Purolater, etc.) as follows:

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David D. Knepper whose telephone number is (571) 272-7607. The examiner can normally be reached on Monday-Thursday from 07:30 a.m.-6:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richemond Dorvil, can be reached on (571) 272-7602.

For the Group 2600 receptionist or customer service call (571) 272-2600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Inquiries regarding the status of submissions relating to an application or questions on the Private PAIR system should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028 between the hours of 6 a.m. and midnight Monday through Friday EST, or by email at [ebc@uspto.gov](mailto:ebc@uspto.gov). For general information about the PAIR system, see <http://pair-direct.uspto.gov>.



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